IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 21ST FEBRUARY 2007 / 2ND PHALGUNA 1928

Ins.APP.No. 34 of 2003()

APPELLANT/RESPONDENT:

THE REGIONAL DIRECTOR,
E.S.I. CORPORATION,
THRISSUR.

BY ADV. SRI.P.SANKARANKUTTY NAIR

RESPONDENT/APPLICANT:

THE MATHRUBHUMI PRINTING
AND PUBLISHING COMPANY LTD.,
MATHRUBHUMI BUILDING,
K.P.KESAVA MENON ROAD,
KOZHIKODE-1.

BY ADV. SRI.U.K.RAMAKRISHNAN

THIS INSURANCE APPEALS HAVING COME UP FOR ADMISSION ON 21/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KURIAN JOSEPH & K.T.SANKARAN,JJ.

Ins.Appeal No.34 of 2003

Dated this the 21st day of February, 2007

JUDGMENT

Sankaran, J.

This appeal is filed challenging the order in E.I.CNo.29/2002 on the file of the Employees Insurance Court, Kozhikode. E.I.C.No.29/2002 was filed by the respondent herein under Section 75 read with Section 77 of the Employees Insurance Act challenging Ext.P3 order dated 23-4-2002 passed by the appellant herein imposing damages to the tune of Rs.1,29,851/-. Damages were imposed on account of failure to pay contribution for the wage periods from June 1992 to October, 1992.

2. With effect from 1-4-1992 the monthly wage limit for the coverage of employees under the ESI Act was enhanced to Rs.3,000/-. The employees challenged the same in O.P.No.5670/1992. Interim stay was granted therein. Therefore, the respondent herein could not recover the employees' contribution from them. The original petition was disposed of holding that the enhancement need be implemented

from 1-11-1992 and not from 1-4-1992. The respondent resumed implementation of the amendment with effect from 1-11-1992 and paid the contribution in respect of the employees for the wage period from 1-11-1992. The decision of the learned single Judge in O.P.No.5670/1992 was challenged by the appellant in Writ Appeal. But the writ appeal was dismissed. The appellant took up the matter before the Hon'ble Supreme Court. The Hon'ble Supreme Court held that the amendment will take effect from 1-4-1992. The respondent herein was not a party before the Supreme Court. However, in view of the decision of the Supreme Court, the contribution payable for the period from 1-4-1992 to 1-11-1992 was paid by the respondent in 1998. Thereafter, the appellant issued a notice imposing damages which was challenged by the respondent herein before the Employees Insurance Court in EIC No.29/2002.

3. The Employees Insurance Court, relying on the decision reported in Sakthi Tiles v. E.S.I.Corporation, 1988(2) KLT 280, held that there was no contumacious conduct on the part of the respondent

herein in not paying the contribution within time and the respondent was prevented from collecting the employees' contribution because of the stay order passed in the writ petition filed by the employees. It was noted by the Insurance Court that after the decision of the Supreme Court, even without any notice, the respondent had complied with the decision of the Supreme Court and paid the contribution for the period from 1-4-1992.

4. In Employees' State Insurance Corporation v. Jardine Henderson Staff Association (2006) 6 SCC 581 the Supreme Court had occasion to deal with a case of payment of interest in a case where the employees had obtained a stay of collection of contribution from them and on the ground that there was stay of collection, the Supreme Court held that the employer is not liable to pay interest on the defaulted payment of contribution. In Regional Director, ESI Corporation v. Cannanore Spinning & Weaving Mills, 2001(3) KLT 393 a similar view was taken. In view of the decision of the Supreme Court in Jardine Henderson Staff Association's case, {(2006) 6 SCC 581}, the

decision in Cannanore Spinning & Weaving Mills' case (2001 (3) KLT 393) and the decision in Sakthi Tiles' case (1988 (2) KLT 280) we are of the view that the order passed by the Employees Insurance Court is legal and valid. No interference is called for. The Insurance Appeal lacks merit and no substantial questions of law arise for consideration. The appeal is, therefore, dismissed.

(KURIAN JOSEPH, JUDGE)

(K.T.SANKARAN, JUDGE)

ahg.

KURIAN JOSEPH &
K.T.SANKARAN, JJ.

Ins.Appeal No.34 of 2003

JUDGMENT

21st February, 2007